

Senate Bill No. 326

CHAPTER 706

An act to amend Section 372 of, and to add Sections 374 and 374.5 to, the Code of Civil Procedure, relating to minors, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 21, 1998. Filed
with Secretary of State September 22, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 326, Leslie. Minors: protective orders.

Existing law authorizes a person who has been a victim of harassment, unlawful violence or threat of violence in the workplace, or domestic violence to obtain a restraining or protective order against the offending party and also authorizes the issuance of specified protective orders during proceedings under the Uniform Parentage Act. The rules of court provide that a minor, accompanied by a guardian, may appear in court without counsel to obtain or oppose any of these orders. Existing law also provides that a minor, 12 years of age or older, may appear in court without a guardian, counsel, or guardian ad litem to obtain a protective order under the Domestic Violence Prevention Act against a person with whom the minor has or had a dating relationship; however, the court may, upon motion or in its discretion, appoint a guardian ad litem to assist the minor in obtaining the order.

This bill would (1) codify the above-described rule of court, with respect to minors under the age of 12; (2) provide that any minor, 12 years of age or older, may appear in court without a guardian, counsel, or guardian ad litem to obtain or oppose any of the above-described restraining or protective orders; (3) require the court to make a specified determination when appointing a particular guardian ad litem to assist the minor; and (4) specify the proper court to hear requests for those orders involving minors. The bill would also require the Judicial Council to adopt forms by a specified date to facilitate the appointment of a guardian ad litem in this context.

The bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 372 of the Code of Civil Procedure is amended to read:

372. (a) When a minor, an incompetent person, or a person for whom a conservator has been appointed is a party, that person shall appear either by a guardian or conservator of the estate or by a guardian ad litem appointed by the court in which the action or proceeding is pending, or by a judge thereof, in each case. A guardian ad litem may be appointed in any case when it is deemed by the court in which the action or proceeding is prosecuted, or by a judge thereof, expedient to appoint a guardian ad litem to represent the minor, incompetent person, or person for whom a conservator has been appointed, notwithstanding that the person may have a guardian or conservator of the estate and may have appeared by the guardian or conservator of the estate. The guardian or conservator of the estate or guardian ad litem so appearing for any minor, incompetent person, or person for whom a conservator has been appointed shall have power, with the approval of the court in which the action or proceeding is pending, to compromise the same, to agree to the order or judgment to be entered therein for or against the ward or conservatee, and to satisfy any judgment or order in favor of the ward or conservatee or release or discharge any claim of the ward or conservatee pursuant to that compromise. Any money or other property to be paid or delivered pursuant to the order or judgment for the benefit of a minor, incompetent person, or person for whom a conservator has been appointed shall be paid and delivered as provided in Chapter 4 (commencing with Section 3600) of Part 8 of Division 4 of the Probate Code.

Where reference is made in this section to “incompetent person,” such reference shall be deemed to include “a person for whom a conservator may be appointed.”

Nothing in this section, or in any other provision of this code, the Civil Code, the Family Code, or the Probate Code is intended by the Legislature to prohibit a minor from exercising an intelligent and knowing waiver of his or her constitutional rights in any proceedings under the Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code.

(b) (1) Notwithstanding subdivision (a), a minor 12 years of age or older may appear in court without a guardian, counsel, or guardian ad litem, for the purpose of requesting or opposing a request for any of the following:

(A) An injunction or temporary restraining order or both to prohibit harassment pursuant to Section 527.6.

(B) An injunction or temporary restraining order or both against violence or a credible threat of violence in the workplace pursuant to Section 527.8.

(C) A protective order pursuant to Division 10 (commencing with Section 6200) of the Family Code.

(D) A protective order pursuant to Sections 7710 and 7720 of the Family Code.



The court may, either upon motion or in its own discretion, and after considering reasonable objections by the minor to the appointment of specific individuals, appoint a guardian ad litem to assist the minor in obtaining or opposing the order, provided that the appointment of the guardian ad litem does not delay the issuance or denial of the order being sought. In making the determination concerning the appointment of a particular guardian ad litem, the court shall consider whether the minor and the guardian have divergent interests.

(2) For purposes of this subdivision only, upon the issuance of an order pursuant to paragraph (1), if the minor initially appeared in court seeking an order without a guardian or guardian ad litem, and if the minor is residing with a parent or guardian, the court shall send a copy of the order to at least one parent or guardian designated by the minor, unless, in the discretion of the court, notification of a parent or guardian would be contrary to the best interest of the minor. The court is not required to send the order to more than one parent or guardian.

(3) The Judicial Council shall adopt forms by July 1, 1999, to facilitate the appointment of a guardian ad litem pursuant to this subdivision.

SEC. 2. Section 374 is added to the Code of Civil Procedure, to read:

374. (a) A minor under 12 years of age, accompanied by a duly appointed and acting guardian ad litem, shall be permitted to appear in court without counsel for the limited purpose of requesting or opposing a request for (1) an injunction or temporary restraining order or both to prohibit harassment pursuant to Section 527.6, (2) an injunction or temporary restraining order or both against violence or a credible threat of violence in the workplace pursuant to Section 527.8, (3) a protective order pursuant to Division 10 (commencing with Section 6200) of the Family Code, or (4) a protective order pursuant to Sections 7710 and 7720 of the Family Code.

(b) In making the determination concerning appointment of a particular guardian ad litem for purposes of this section, the court shall consider whether the minor and the guardian have divergent interests.

(c) The Judicial Council shall adopt forms by July 1, 1999, to implement this section. The forms shall be designed to facilitate the appointment of the guardian ad litem for purposes of this section.

SEC. 3. Section 374.5 is added to the Code of Civil Procedure, to read:

374.5. A proceeding initiated by or brought against a minor for any of the injunctions or orders described in paragraph (1) of subdivision (b) of Section 372 or subdivision (a) of Section 374 shall be heard in the court assigned to hear those matters; except that, if the minor bringing the action or against whom the action is brought

has previously been adjudged a dependent child or a ward of the juvenile court, the matter shall be heard in the juvenile court having jurisdiction over the minor.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that the courts may promptly issue and enforce protective and restraining orders with respect to minors who are victims or perpetrators of violence, it is necessary that this act take effect immediately.

